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Chapter 10. Legislation and Litigation

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Chapter 10. Legislation and Litigation

INTRODUCTION

The United States Constitution empowers the Congress to carry out the census in “such manner as they shall by Law direct” (Article I, Section 2). Congress passed special acts for the first 14 censuses (1790 to 1920) with detailed provisions on how to take the census and what questions to include. In 1929, Congress passed the Permanent Census Act under which the 1930 Decennial Census was taken. This act gave the Secretary of Commerce (and by Secretarial delegation, the Director of the Census) substantial discretion in determining the questions and procedures. Modifications to the 1929 act and later legislation to provide for the census of housing governed the 1940 and 1950 censuses. Congress codified these and all other Census Bureau statutes in 1954 as Title 13, United States Code, which permanently authorized the agency’s censuses and other statistical programs. Title 13 was amended several times over the ensuing years and governed the 1980 census. (See app. 1A of ch. 1 for pertinent sections.)

This chapter reviews key provisions of Title 13, changes in this or other laws affecting the 1980 census, and various aspects of congressional oversight. Following the legislative section, the chapter focuses on the lawsuits filed during and after the 1980 census and their eventual outcome. With 52 cases, the 1980 census was perhaps the most litigated in American history. Plaintiffs’ major concerns were the alleged undercount of minorities, inclusion of undocumented aliens, operational difficulties that some census offices allegedly encountered, and the unexpected, substantial population shifts some jurisdictions experienced. The motivations to file suit centered around the anticipated loss of Federal and State funding tied to population data and the potential loss of political power in statehouses and Congress. Cases have been summarized and several are reviewed in more detail as exemplary.

Title 13

Title 13 does not specify which subjects or questions are to be included in the census. It does require the Census Bureau to notify Congress of the general content 3 years before the decennial census, and on the actual question wording 2 years before. The law also directs that State population counts for apportionment purposes must be delivered to the President of the United States within 9 months of Census Day.

Title 13 requires individuals to complete (or provide information for) the census questionnaire and participate in other phases of the census as the Census Bureau deems necessary. These other activities may include providing information about a housing unit’s address and number of living quarters, participating in test and dress-rehearsal censuses, answering decennial-related research surveys, or responding to post-census questionnaires that evaluate decennial census coverage. Anyone 18 years of age or older who willingly neglects or refuses to answer the census may be fined up to \$100. Anyone who knowingly gives false answers is subject to a fine of \$500. These fines were not assessed, as the Census Bureau focused on encouraging voluntary public participation rather than emphasizing the available sanctions.

Title 13 also mandates the strict confidentiality of the information gathered. It states, “Neither the Secretary, nor any other officer or employee of the Department of Commerce or bureau or agency thereof may...

- use information furnished under the provisions of this title for any purpose other than the statistical purposes for which it is supplied
 - make any publication whereby the data furnished by any particular establishment or individual under this title can be identified
- or
- permit anyone other than the sworn officers and employees of the Department or bureau or agency thereof to examine the individual reports.”

Every permanent and temporary employee of the Census Bureau takes an oath to protect the confidentiality of census information. Employees are subject to a fine of up to \$5,000 and/or 5 years imprisonment for wrongful disclosure.

Individual census records are by law (Title 44, United States Code) confidential for 72 years after collection. The National Archives and Records Administration then may open them to the general public for genealogical and other uses. Many people must rely on later records (i.e., 1920 on) of their ancestors’ or their own census answers to prove age, residency, and/or identity. The Census Bureau is allowed to release information from these

only to the named persons, their authorized representatives, or legal beneficiaries upon proof of death.

LÉGISLATION

Since 1950, the Census Bureau had regularly evaluated decennial census coverage and had published estimates of undercounts. During the 1970's, these estimates (and their implications that undercoverage had particularly affected minorities) received increased scrutiny in the context of (1) allocations of Federal funds to State and local jurisdictions, based on census figures, and (2) the growing importance of congressional and legislative redistricting plans that were to conform to Supreme Court rulings on accurate and equitable political representation.

Many public and private individuals and organizations, especially those representing Blacks, Hispanics, and other minorities, expressed concerns about the undercoverage that might be anticipated in the 1980 census. Aware of these concerns, the Census Bureau organized three public advisory committees in the mid-1970's so these groups might share directly in planning a 1980 census that would assure accurate and complete counts (see ch. 2). As these matters became more public, however, they absorbed the attention of journalists, academicians, elected officials, and professional associations. The problems and proposed remedies for undercounting and related issues therefore were also addressed through congressional oversight, as well as in many other forums.

Congressional Oversight Activities

During the 1980 census period, the Census Bureau came under the jurisdiction of the House Committee on Post Office and Civil Service's Subcommittee on Census and Population (formerly known as the Subcommittee on Census and Statistics). The Committee on Government Operations also exercised some oversight responsibilities. On the Senate side of the Capitol, the Committee on Post Office and Civil Service also had a Subcommittee on Census and Statistics (1975-1976), after which the Senate Committee on Governmental Affairs' Subcommittee on Energy, Nuclear Proliferation and Federal Services assumed these responsibilities. Appendix 10A is a list of the oversight subcommittee members from the 93rd to the 98th Congresses (1973-1984).

During the period 1973 to 1982, these committees were the main focus of congressional oversight. The General Accounting Office and the Congressional Research Service, both offices of the Congress, investigated and observed Census Bureau activities under congressional mandates (see below).

Normal oversight throughout the period included the House Subcommittee on Census and Population's review of Census Bureau budget requests, authorizations, and appropriations. The Senate subcommittee had the responsibility of reviewing the President's nominations of a Census Bureau director; these included Manuel Plotkin (1977 to 1979), Vincent Barabba (1979 to 1981), and Bruce Chapman (1982 to 1984).

Review of House and Senate Oversight Hearings—

In 1973 and 1974, the House subcommittee reviewed proposed amendments to Title 13 that would establish the redistricting data program and a mid-decade census. In 1975, further hearings on the redistricting program led to Public Law 94-171, which provided participating States with census data tailored to their legislative redistricting needs. (See ch. 8.) Other hearings focused on the confidentiality of data sources and the transfer of census records to the National Archives with their eventual release to the public after 72 years.

During 1976 and 1977, the House subcommittee conducted hearings on the possibility of providing neighborhood statistics for all political jurisdictions, regardless of size and boundaries and that might not follow visible natural or artificial features. The Bureau established such a program in 1982 (see ch. 8). The Oakland, CA, and Camden, NJ, test censuses held in 1977 had poor mail-return rates. The House subcommittee reviewed the Census Bureau's 1980 plans in the light of these test census problems. A two-stage census and the establishment of an independent census evaluation office were other topics.

In 1979, plans and estimated costs for the 1980 census were the subjects of several House subcommittee hearings around the country. Also, Census Bureau plans for reaching minorities, the inclusion of aliens in the census, and privacy issues were discussed. In 1980, House and Senate hearings were held partly in response to concerns about operational and budgetary problems. The subcommittees were concerned about the agency's ability to meet legal deadlines, and raised the issue of adjusting the census for the anticipated undercount as preliminary figures showed major population losses in some cities and States.

Mayors, U.S. Conference of Mayors officials, and others with major stakes in the census testified about census field operational problems that they claimed were producing inaccurate population and housing counts. The mayors' conference reported over half of its surveyed cities had problems with local census staff and felt early population-count estimates were too low due to operational errors. The accuracy of small-area and rural census data was also called into question.

After the official 1980 census results were released, additional hearings focused on the congressional apportionment formula that had been in use since the 1940 census, the size of congressional districts, whether the number of House seats should be increased, the implications of an undercount, and the effects of undocumented immigrants on the apportionment. Legislators also began focusing on ways to improve the next census.

Congressional oversight served two valuable purposes before and during the 1980 census. It provided a forum in which census plans and actions were examined, and in some instances modified; and it laid the groundwork for several changes in census law that were recommended by, or were acceptable to, the Bureau.

P.L. 94-171, State Redistricting Program (Dec. 23, 1975)

Title 13, Section 141, was amended to allow officials responsible for each State's legislative apportionment or redistricting programs to obtain special tabulations from the decennial census.

They could do this by providing the Census Bureau, no later than 3 years before Census Day (April 1), with plans identifying geographic areas (census blocks, tracts, etc.) that made up the then-existing voting precincts for which census population tabulations were desired. The agency then would furnish such data within 1 year after Census Day, i.e., by April 1, 1981 in the case of the 1980 census. The legislation passed the House in 1974, but not the Senate before the session ended. Similar legislation had been considered in the 1972 and 1973 sessions.

The Census Bureau focused on redistricting data as one of its major goals for the 1980 census, and began working in early 1972 to avoid possible problems in congressional and State legislative reapportionment such as noncontiguous enumeration-district (ED) portions, difficulties in relating ED's to political boundaries, or data releases just a few weeks before some States were required by their constitutions or State laws to redraw various intrastate legislative districts.

Previously submitted redistricting data bills carried time frames varying from 2 to 4 years, but 3 years was the finally settled period in which States would officially designate political geography.

P.L. 94-521, The Mid-Decade Census (Oct. 17, 1976)

This legislation provided for a mid-decade census and made other census-related changes to Title 13. Planning funds were appropriated in the early 1980's, but the program was eventually dropped and there was no enumeration in 1985. P.L. 94-521's provisions affecting the 1980 census were as follows (section references are to Title 13); they—

- Expanded the definition of a "respondent" to include any person on behalf of whom information was provided, as well as the direct respondent. (Sec. 1.)
- Changed the word "schedule," used in past censuses, to "questionnaire," to conform with modern practice. (Sec. 5.)
- Authorized obtaining census information from existing sources and organizations in lieu of direct inquiry. (Sec. 6c.)
- Required apportionment figures to be completed within 9 months of Census Day instead of 8. (Sec. 141b.)
- Prohibited the use of mid-decade census data for congressional reapportionment or State-level redistricting. (Sec. 141e(2).)

- Specified that proposed subjects for both the mid-decade and decennial censuses would have to be submitted to the congressional oversight committees 3 years before Census Day, and the actual questions 2 years before Census Day. Subsequent content or question changes would be submitted as necessary. (Sec. 141f.)
- Increased the penalty for wrongful disclosure from a maximum fine of \$1,000 and/or 2 years imprisonment to \$5,000 and 5 years, respectively. (Sec. 214.)
- Deleted the jail penalty for refusing or neglecting to answer census questions or for giving false responses. (Secs. 221a and 221b.)
- Prohibited mandatory disclosure of any person's religious beliefs or affiliation. (Sec. 221c.)

Some legislation, enacted in the 1970's and discussed below, directly or indirectly affected the 1980 census without changing Title 13.

P.L. 93-579, Privacy Act of 1974 (Dec. 31, 1974)

This legislation developed over a period of several years of bills and hearings before the House and Senate Government Operations Committees. Some of the interest in establishing the right of privacy by law stemmed from the abuses of personal information and personal records systems identified during the Watergate investigations (1973-1974). The Census Bureau and other statistical agencies took a direct interest in how this legislation differentiated between statistical records and administrative records, the latter being the main focus of the rights and benefits the law granted to persons. Because they were statistical in nature and not used to affect individual rights or obligations, individual records from the censuses were exempted from the Privacy Act's provisions for correcting or amending one's own records (Title 5, U.S. Code, Section 552a(k)(4)).

The Privacy Act's predecessor bills had a key provision prohibiting Government agencies from disclosing any personal information to another agency without the written consent of the individual to whom the record pertained. There were several exemptions to this prohibition. Census Bureau Director Vincent Barabba asked for and obtained a specific exemption permitting other Government agencies to disclose individual personal information to the Bureau of the Census "for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13." Without this, agencies would not have been able to provide the Bureau with identifiable information that could assist in the conduct or evaluation of the census itself. The exemption enabled the Census Bureau to continue its long-standing practice of using information from other agencies for statistical purposes.

P.L. 94-311, Americans of Spanish Origin—Social Statistics Act (June 16, 1976)

Through this law, Congress called for improved and expanded statistics for persons of Spanish origin. The Census Bureau already was engaged in such a program, and the act's impact was limited in terms of ongoing 1980 census plans and operations. The law did reinforce the continuing expansion of Hispanic and Spanish-origin tabulations, studies on the undercount of Hispanics, and the affirmative-action program for employing Hispanics in census offices.

P.L. 95-416, Archival Records Administration Act (Oct. 5, 1978)

This law revised selected confidentiality provisions and policies of the Federal statutes and General Services Administration (GSA) practices relating to the National Archives' acceptance of Federal records for historical preservation, especially with regard to permanent custody and public access. (GSA controlled the National Archives from 1949 to 1984.) The act reduced from 50 to 30 years the period during which agency disclosure and use restrictions on Federal records had to be maintained. The 1952 agreement between the Director of the Census Bureau and the Archivist of the United States to restrict access to individual population census records for 72 years was maintained and incorporated into the act, which amended Title 44 of the U.S. Code, but not Title 13. Title 44 governed the National Archives' operations. Prior to the 1978 law, the Census Bureau had sought a longer period of closure for census records, while the Archives wanted a shorter period, owing primarily to the increased interest in old census records for genealogical research. After the 1978 legislation was enacted, the Census Bureau provided notice of the 72-year restriction on all 1980 census questionnaires (see ch. 1). This notice appeared to have no adverse effect on the traditionally high levels of public cooperation in completing and returning census forms.

P.L. 95-431, Commerce Appropriation Act (Oct. 10, 1978)

Title III of the 1979 Commerce Department appropriation act allowed certain 1980 census employees engaged in early preparatory work to be paid on a piece-rate basis rather than in accordance with prevailing Federal minimum wage-and-overtime compensation requirements, regardless of the resulting hourly rate equivalent. Piece rates were considered essential to timely and cost-effective census operations.

P.L. 95-454, Civil Service Reform Act of 1978 (Oct. 13, 1978)

In 1974, Representative Les Aspin (D-WI) introduced H.R. 15032, designed to eliminate granting preferences in Census Bureau hiring to referrals from political organizations and officials.

About 40 percent of the agency's 1971 to 1973 hiring was through this system. The Bureau historically used the referral system, especially in rural and suburban areas, to inexpensively attract applicants with civic awareness. Each candidate still had to pass a qualifying examination given to all applicants. The restrictions would have applied to both the permanent restrictions would have applied to both the permanent staff of interviewers and the much larger but temporary decennial census work force. H.R. 15032 was not reported out of the full Committee on Post Office and Civil Service.

Senator Abraham Ribicoff (D-CT) and others initially sponsored the Civil Service Reform Act to overhaul the Federal Government's personnel system and to prohibit preferential treatment of individuals on the basis of political affiliation. However, the law allowed the President to exempt certain personnel actions from the prohibition if "necessary and warranted by conditions of good administration." He did this for the 1980 census, and many supervisory field positions were filled through referral recommendations. Most enumerators were recruited through a great variety of sources without political preference.

P.L. 96-52, Leasing Exemption (Aug. 13, 1979)

In mid-1979, Congress passed a bill providing a limited exemption from restrictions on the maximum amount the Census Bureau could pay for office space rental during the 1980 census. This act raised the authorized monthly maximum rent the agency could pay during the census from 15 percent of the annual fair-market rental value to 105 percent. This provision allowed leasing of short-term office space in some high-cost, low-vacancy office space markets.

P.L. 96-68, Commerce Appropriation Act (Sept. 24, 1979)

This act for FY 1980 reauthorized the hourly rate exemptions (found in the FY 1979 act) for certain enumerators working on the 1980 census.

Census Data and the Immigration and Naturalization Service (INS)

Representative Elizabeth Holtzman (D-NY), who chaired the Subcommittee on Immigration, Refugees, and International Law, and Representative Robert Garcia (D-NY), chairperson of the Subcommittee on Census and Population, introduced in 1979 a joint resolution adding a new section to the Immigration and Naturalization Act that would explicitly prohibit the INS from excluding or deporting aliens or members of their families based on information obtained or derived directly or indirectly from the Census Bureau.

The Census Bureau opposed the resolution. It feared undocumented aliens would not participate in the 1980 census because they might get the impression that the INS was already using census data and that legislation was required to stop such action. The full Judiciary Committee did not report the bill out.

Census Reform Proposals of 1977

On August 5, 1977, Subcommittee on Census and Population chairperson William Lehman (R-FL) introduced H.R. 8871, titled "The Census Reform Act." The bill contained many detailed amendments to Title 13 on the content and conduct of the 1980 census, the use of sampling techniques, the measurement of error in census and survey statistics, the nature and timing of all the Bureau's statistical activities and evaluation studies, and the appeals that State and local governments could exercise to obtain presumably more adequate data at Federal expense. The bill also created within the Census Bureau a unit, to be called the Division of Evaluation, that was not accountable to any office in the executive branch.

The Bureau's director testified that the bill would require dramatic changes in census content and procedures without sufficient time for testing and, despite claims that these provisions would improve coverage, there was no experience or evidence for anyone to assume the procedures the bill called for would work to that end.

The Census Reform Act required the basic enumeration for the complete count in the 1980 census to be completed in each geographic area before the sample work could start. (This was known as a two-stage census.) Another provision prohibited any changes in content or procedures any later than 4 months after the dress rehearsal. If there were any compelling circumstances that required last-minute changes, as had happened in previous censuses, this prohibition—without new legislation—would leave the Census Bureau unable to change procedures within 20 months before the census.

In the light of substantial opposition to the bill and subsequent modifications, the House Post Office and Civil Service Committee took no action on the subcommittee's proposals. The Census Bureau did, however, adopt one of them; the agency established a formal procedure whereby local governmental units could challenge population estimates.

Later in 1978, Congressman Lehman introduced H.R. 11253, titled the "Federal Statistical Control Act." This bill would have required the President to (1) continually compile and submit to Congress a catalog of all Federal statistical activities, (2) justify new ones with an impact statement, and (3) seek renewal every 5 years of significant statistical programs without specific termination dates. The bill was later modified and resubmitted as an amendment to Title 13, but was not reported out of the full committee.

Adjustment and Apportionment Legislation

In 1976, the Subcommittee on Census and Population considered a bill requiring an undercount survey to be taken after each census; Federal agencies using census data would have to take

the survey results into account when using census data in their assistance formulas. In 1977, the bill was recast as an amendment to Title 13 and Representative Charles Rangel (D-NY) introduced it as H.R. 2490, but it was not reported out of the full committee.

In 1980, Representative Joseph McDade (R-PA) attached an amendment (H.R. 7542) to an appropriation measure that would have excluded undocumented aliens from census counts used for apportionment purposes. The Justice Department testified that the amendment would be illegal. (See also the discussion of related litigation below.) Nevertheless, the House passed the bill in August 1980 and the Senate Appropriations Committee approved it, but it did not survive a joint conference on the entire measure.

1980 CENSUS LITIGATION

The 52 suits filed, beginning in 1979, against the Federal Government in connection with the 1980 census, are listed in appendix 10B. The cases tended to fall into four general categories, and these are discussed briefly below.

Deletion of Undocumented Aliens From the Census Count

Only one of the suits dealt with this issue, but it received significant attention in the media and in Congress when it was filed in 1979 by the Federation for American Immigration Reform (FAIR), together with the Committee for Representative Government and Members of Congress from five States. They alleged that including undocumented aliens in the census for the purpose of reapportioning the House of Representatives and drawing congressional and State legislative districts would unconstitutionally deprive lawful U.S. residents of proper representation. (The plaintiffs maintained that the Constitution (Article I, Section 2) used the word "persons" to be counted in the census to mean only lawful residents, citizens, and properly documented aliens.) Further, they alleged that Federal funds would be inequitably distributed. The plaintiffs sought relief by having apportionment based on legal residence only, either by having undocumented aliens excluded from the census or by having them identified in the census and subtracted from the apportionment count. As an alternative, their numbers could be estimated from Immigration and Naturalization Service data.

Addressing plaintiffs' allegations of malapportionment of the U.S. House of Representatives, the U.S. District Court ruled that the plaintiffs lacked standing to raise the issue; they needed to show that they had personally suffered concrete injury and that the court could fashion a remedy to redress it. The court found that the injury to the plaintiffs of counting undocumented aliens was speculative, as apportionment was affected by many factors other than the presence of such aliens. Further, the court concluded that there was no remedy for the alleged injury, based on the Census Bureau's argument that it could not determine accurately the number of undocumented aliens or their location. Although not the basis for its decision, the court observed that

the Constitution's framers appeared to intend that the census be all-inclusive, with the exception of those expressly excluded (Indians not taxed and two-fifths of all slaves) when Article I, Section 2 was written.

With regard to the allegations that congressional and State legislative districts could not be properly drawn, the court held that the States were free to use data other than those from the census; consequently, plaintiffs should direct this issue to the State legislatures. Finally, the court held that Congress could distribute funds on any rational basis. The Supreme Court refused to review the district court's ruling.

Discovery of Confidential Data

Questioning the completeness of the census, Essex County, NJ, filed suit requesting access to the census master address registers (MAR's) under the Freedom of Information Act (FOIA). The city of Denver, CO also filed suit, as it doubted the vacancy rate reported in the census and wanted access to these registers, but cited the Federal Rules of Civil Procedure. The MAR's contained not only the address lists prepared and updated for the census, but also the occupancy status of each address and, in some instances, the names of the occupants. The Census Bureau argued that the MAR's were confidential and protected from disclosure under Sections 8 and 9 of Title 13.

In the Essex County case, the district court ordered the Census Bureau to turn over the MAR's, and was sustained on appeal. Another district court required that lists of vacant housing units be supplied to the city of Denver, but the appellate court reversed that order. Both cases were appealed to the Supreme Court, which held that MAR's were protected from disclosure under the FOIA, as that act exempted material specifically held confidential by statute (in the case of the census, Title 13). The Supreme Court also ruled that MAR's were protected as well under the discovery provisions of the Federal Rules of Civil Procedure, on the grounds that Congress intended Sections 8 and 9 of Title 13 to create a privilege; MAR's therefore were not discoverable. The Court noted that even if the names had been deleted before turning over the registers, "Congress plainly contemplated that raw data reported by or on behalf of individuals [were] to be held confidential and not available for disclosure." That the governmental units seeking the census data would use them only for statistical purposes was irrelevant; census legislation required that such data be handled only by "census employees sworn to secrecy."

Census Procedures and Adjustment

By far the bulk of the cases—48 in all—dealt with the two issues of census procedures and adjustment: 16 dealt with adjustment only, 10 had to do with procedures only, 20 with those and adjustment, 1 was a challenge to city boundaries used in the census, and 1 with the availability of the count.

The suits in the first categories focused on perceived inadequacies in the procedures for taking the census, e.g., the local review process or in the way that was administered (alleged insufficiency of time for local officials to participate in that review), as well as the census procedures that allegedly were designed or implemented in such a way that not everyone was counted. In the cases that called for adjustment of the census results, the plaintiffs alleged that due to the acknowledged undercounting of minority populations, those areas that had heavy concentrations of such persons were disproportionately undercounted. Thus, the plaintiffs argued, the counts should be adjusted for the number of minority persons missed in the census.

Twenty-six of the lawsuits were dismissed in their entirety, virtually all of them voluntarily; the court dismissed one case (Detroit, MI) on procedural grounds, i.e., that plaintiffs lacked standing to sue. The complaint filed by the city of Philadelphia, PA, was dismissed in part (the part alleging mismanagement). Except for the New York City and State suit, those remaining were consolidated in multidistrict litigation in the U.S. District Court in Baltimore, MD. As of early 1988, these suits had not been resolved.

In the New York suit, the plaintiffs alleged both failure to properly implement census procedures (mismanagement) and a disproportionate undercount that required adjustment. When, citing confidentiality, the Census Bureau refused to supply address registers the plaintiffs claimed were needed to prove their charges, the court issued a preclusion order that prevented the Bureau from presenting much of its defense to the mismanagement charges. The district court then held for the plaintiffs and directed the Census Bureau to adjust the New York count. This order was reversed on appeal and remanded for a second trial on the grounds that the district court's preclusion order was too broad. That trial, which began in 1984, was limited to the adjustment issue only and was decided in 1987. The court held that the standard for its review of the Bureau's decision on adjustment was the "arbitrary and capricious" standard. The court concluded that "plaintiff has failed to prove that the Bureau's decision not to adjust was unreasonable or arbitrary and capricious."

There were two cases of lesser significance, in which private citizens filed suit on census-related issues. One, who had been involved in similar litigation at the time of the 1970 decennial census, challenged the apportionment of the House based on the 1980 count, alleging that the apportionment failed to comply with the requirements of the 14th amendment. The district court ruled in the Bureau's favor and the appeals court upheld that decision. In the second case, the plaintiff charged that both the Internal Revenue Service and the Census Bureau had invaded his constitutional rights and failed to comply with the Privacy Act; the court ruled in the Government's favor.

Imputation

The State of Indiana, in *Orr v. Baldrige*, alleged that the use of "hot deck" imputation—the addition of data on persons and housing units not enumerated in the census by duplicating the

characteristics of persons and units from nearby, reported households—violated Section 195 of Title 13, was “arbitrary and capricious,” and an abuse of discretion. The plaintiff alleged that had the Census Bureau not used imputation, Indiana would not have lost a seat in the House of Representatives to Florida. The court ruled in favor of the Government, holding that the cited section of Title 13, which prohibited the use of sampling for apportionment purposes, did not prohibit imputation. Having determined that imputation was not prohibited by law, the court

addressed the plaintiff's claim that the use of imputation was arbitrary and capricious. The court concluded that this issue was not subject to judicial review since the statute in question, Title 13, U.S. Code, provided “no meaningful standard against which to judge the agency's exercise of discretion.” The court went on to hold, in the alternative, that even if the Census Bureau's use of imputation were subject to judicial review, this action by the agency was not arbitrary or capricious.

Appendix 10A. The Census Bureau's Congressional Oversight Committees, 1973-1984

(Asterisk (*) indicates chairperson)

House Committee on Post Office and Civil Service

***Thaddeus J. Dulski (D-NY)**

Subcommittee on Census and Statistics

93rd Congress
1973-1974

***Richard C. White (D-CA)**
James M. Hanley (D-NY)
Morris K. Udall (D-AZ)
William Lehman (D-FL)
Charles H. Wilson (D-CA)
John H. Rousselot (R-CA)
Andrew J. Hinshaw (R-CA)
L.A. (Skip) Bafalis (R-FL)

Senate Committee on Post Office and Civil Service

***Gail W. McGee (D-WY)**

[No subcommittee]

***David N. Henderson (D-NC)**

Subcommittee on Census and Population

94th Congress
1975-1976

***Patricia Schroeder (D-CO)**
William Lehman (D-FL)
Stephen L. Neal (D-NC)
Gladys N. Spellman (D-MD)
William M. Brodhead (D-MI)
Paul Simon (D-IL)

***Gail W. McGee (D-WY)**

Subcommittee on Census and Statistics

***Frank E. Moss (D-UT)**
Patrick J. Leahy (D-VT)
Ernest F. Hollings (D-SC)
Jennings Randolph (D-WV)
Ted Stevens (R-AK)
Henry Bellmon (R-OK)

Senate Committee on Governmental Affairs

***Richard N.C. Nix (D-PA)**

Subcommittee on Census and Population

95th Congress
1977-1978

***William Lehman (D-FL)**
Robert Garcia (D-NY)
Patricia Schroeder (D-CO)
Stephen J. Solarz (D-NY)
John H. Rousselot (R-CA)
Jim Leach (R-IA)

***Abraham Ribicoff (D-CT)**

Subcommittee on Energy, Nuclear Proliferation and Federal Services

***John Glenn (D-OH)**
Thomas F. Eagleton (D-MO)
Edmund S. Muskie (D-ME)
Henry M. Jackson (D-WA)
Jacob Javits (R-NY)
Ted Stevens (R-AK)
Charles McC. Mathias (R-MD)

Appendix 10A. The Census Bureau's Congressional Oversight Committees, 1973-1984

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(Asterisk (*) indicates chairperson)

	House Committee on Post Office and Civil Service	Senate Committee on Post Office and Civil Service
	House Committee on Post Office and Civil Service	Senate Committee on Post Office and Civil Service
	*James M. Hanley (D-NY)	*Abraham Ribicoff (D-CT)
	<u>Subcommittee on Census and Population</u>	<u>Subcommittee on Energy, Nuclear Proliferation and Federal Services</u>
96th Congress 1979-1980	*Robert Garcia (D-NY) G.T. (Mickey) Leland (D-TX) Geraldine A. Ferraro (D-NY) Gus Yatron (D-PA) Mary Rose Oakar (D-OH) James A. Courter (R-NJ) Charles Pashayan, Jr. (R-CA) Daniel B. Crane (R-IL)	*John Glenn (D-OH) Thomas F. Eagleton (D-MO) Henry M. Jackson (D-WA) Carl Levin (D-MI) William V. Roth, Jr. (R-DE) Ted Stevens (R-AK) David Durenberger (R-MN)
	*William D. Ford (D-MI)	*William V. Roth, Jr. (R-DE)
	<u>Subcommittee on Census and Population</u>	<u>Subcommittee on Energy, Nuclear Proliferation and Federal Services</u>
97th Congress 1981-1982	*Robert Garcia (D-NY) Gus Yatron (D-PA) G.T. (Mickey) Leland (D-TX) Mary Rose Oakar (D-OH) James A. Courter (R-NJ) Daniel B. Crane (R-IL) Wayne Grisham (R-CA)	*Charles H. Percy (R-IL) William S. Cohen (R-ME) Mack Mattingly (R-GA) John Glenn (D-OH) Henry M. Jackson (D-WA) Carl Levin (D-MI)
	*William D. Ford (D-MI)	*William V. Roth, Jr. (R-DE)
	<u>Subcommittee on Census and Population</u>	<u>Subcommittee on Energy, Nuclear Proliferation and Federal Services</u>
98th Congress 1983-1984	*Robert Garcia (D-NY) G.T. (Mickey) Leland (D-TX) Mary Rose Oakar (D-OH) Charles E. Schumer (D-NY) James A. Courter (R-NJ) William E. Dannemeyer (R-CA)	*Charles H. Percy (R-IL) William S. Cohen (R-ME) David Durenberger (R-MI) Daniel J. Evans (R-WA) John Glenn (D-OH) Carl Levin (D-MI) Sam Nunn (D-GA)

[Note: Sen. Evans served on the subcommittee until February 1984; Sen. Nunn replaced him as a member.]

Appendix 10B. 1980 Census of Population and Housing, Summary of Litigation

(MDL = Multi-district litigation)

Plaintiff (case title and date filed)	Issue(s)	Resolution
Anchorage, AK (Sullivan v. Klutznick, 12/29/80)	Adjustment	Case dismissed
Atlanta, GA (City of Atlanta v. Klutznick, 9/26/80)	Adjustment	Referred for MDL
Baltimore, MD (City of Baltimore v. Klutznick, 8/19/80)	Local review counts	Case dismissed
Beaumont, TX (Meyers v. Baldrige, 2/5/81)	Adjustment	Case dismissed
Carrboro, NC (Drakeford v. Klutznick, 11/24/80)	Census procedures, adjustment	Case dismissed
Chester, PA (City of Chester v. Klutznick, 8/21/80)	Census procedures, adjustment	Referred for MDL
Cincinnati, OH (City of Cincinnati v. Klutznick, 9/5/80)	Local review counts	Case dismissed
College Park, GA (City of College Park v. Klutznick, 12/31/80)	Adjustment	Referred for MDL
Cook County, IL (Carey v. Klutznick, 8/27/80)	Adjustment	Case dismissed
Denver, CO (McNichols v. Klutznick, 9/3/80)	Accuracy of vacancy rate (district court ordered release of lists of vacant units; appeals court reversed district court order)	Supreme Court ruled address lists are confidential
Detroit, MI (Young v. Klutznick, 4/1/80)	Adjustment (ordered by district court, reversed by appeals court)	Supreme Court refused to review case
Dona Ana County, NM (County of Dona Ana v. U.S. Dept. of Commerce, 8/20/80)	Accuracy of vacancy rate, census procedures, adjustment	Case dismissed
Duluth, MN (City of Duluth v. Klutznick, 9/17/80)	Adjustment	Case dismissed
East Point, GA (East Point v. Klutznick, 12/24/80)	Adjustment	Referred for MDL
Essex County, NJ (Shapiro v. Klutznick, 8/1/80)	FOIA request for address lists (district and appeals courts ordered lists turned over)	Supreme Court ruled address lists are confidential
Fairbanks, AK (Carlson v. Baldrige, 7/6/81)	Census procedures	Case dismissed

Appendix 10B. 1980 Census of Population and Housing, Summary of Litigation

Plaintiff (case title and date filed)	Issue(s)	Resolution
Federation for American Immigration Reform (FAIR v. Klutznick, 12/5/79)	Inclusion of undocumented aliens in census (district court ruled in Bureau's favor; appellate court upheld district court decision)	Supreme Court refused to review case
Gary, IN (Hatcher v. Klutznick, 12/31/80)	Adjustment	Referred for MDL
Glen Carbon, IL (Munzert v. Klutznick, 12/30/80)	Census procedures, adjustment	Referred for MDL
Hobbs, NM (City of Hobbs v. Klutznick, 10/1/80)	Census procedures (concluded that address registers are confidential)	Case dismissed
Hudson County, NJ (Clark v. Klutznick, 12/31/80)	Census procedures, adjustment	Referred for MDL
Indiana (Orr and State of Indiana v. Baldrige, 6/5/81)	Tabulation procedures	Case decided in Bureau's favor
Jefferson County, MO (Krodinger v. Klutznick, 12/31/80)	Census procedures, adjustment	Referred for MDL
Juneau, AK (Overstreet v. Baldrige, 4/3/81)	Census procedures, adjustment	Case dismissed
Louisiana and New Orleans, LA (State of Louisiana and City of New Orleans v. Klutznick, 1/6/81)	Census procedures adjustment	Referred for MDL
Massachusetts (Commonwealth of Massachusetts v. Klutznick, 10/30/80)	Census procedures, adjustment	Referred for MDL
Mayaguez, PR (Cole v. Baldrige, 3/31/81)	Adjustment	Referred for MDL
Miami, FL (Ferre v. Klutznick, 10/30/80)	Adjustment	Referred for MDL
Newark, NJ (Gibson v. Klutznick, 10/22/80)	Adjustment	Referred for MDL
New Jersey Reapportionment Commission (Apportionment Commission of the State of New Jersey v. Levine, 2/13/81)	Request counts prior to April 1, 1981	Counts became available Feb. 25, 1981
New Mexico (State of New Mexico v. Klutznick, 9/4/80)	Census procedures (district court denied plaintiff's motions), adjustment	District court ruled in favor of the Census Bureau
New Orleans (see "Louisiana")		

Appendix 10B. 1980 Census of Population and Housing, Summary of Litigation

Plaintiff (case title and date filed)	Issue(s)	Resolution
New York City and State (Carey v. Klutznick, 8/8/80; later Cuomo v. Baldrige)	Census procedures and adjustment (district court decided in plaintiff's favor; appeals court remanded case; district court order to turn over address registers reversed on appeal; Supreme Court refused to review case)	District court ruled in favor of the Census Bureau
Owensboro, KY (City of Owensboro v. Klutznick, 12/17/80)	Official city boundaries	Case dismissed
Parsippany-Troy Hills Township, NJ (Fahy v. Klutznick, 3/2/81)	Census count challenge, adjustment	Referred for MDL
Philadelphia, PA (City of Philadelphia v. Klutznick, 8/12/80)	Census procedures (appeals court upheld district court decision in Bureau's favor)	Referred for MDL
Pontiac, MI (Holland v. Klutznick, 8/27/80)	Census procedures	Case dismissed
Red Lake Band of Chippewa Indians, MN (Red Lake Band v. Klutznick, 11/28/80)	Census procedures, adjustment	Referred for MDL
St. Louis, MO (Conway v. Klutznick, 12/3/80)	Census procedures, adjustment	Case dismissed
San Juan, PR (Padella v. Klutznick, 1/8/81)	Adjustment	Referred for MDL
Scioto County, OH (Scioto County v. Klutznick, 1/16/81)	Census count challenge	Referred for MDL
Secaucus, NJ (Town of Secaucus v. Klutznick, 5/27/81)	Census procedures, adjustment	Referred for MDL
Spanish Coalition for Jobs (Spanish Coalition v. Klutznick, 6/12/80)	Adjustment	Referred for MDL
Stone County, MO (Connell v. Baldrige, 3/30/81)	Census procedures, adjustment	Referred for MDL
Terre Haute, IN (City of Terre Haute v. Klutznick, 12/11/80)	Census procedures	Case dismissed
Union City, NJ (Musto v. Baldrige, 5/6/81)	Census procedures, adjustment	Referred for MDL
Wayne Township, NJ (Jasinski v. Klutznick, 12/22/80)	Census count challenge	Case dismissed
West New York, NJ (DeFino v. Klutznick, 12/3/80)	Census procedures, adjustment	Referred for MDL
Westchester County, NY (DeBello v. Klutznick, 12/1/80)	Census procedures, adjustment	Case dismissed

Appendix 10B. 1980 Census of Population and Housing, Summary of Litigation

Plaintiff (case title and date filed)	Issue(s)	Resolution
Willacoochee, GA (Willacoochee v. Baldrige, 2/2/81)	Census count challenge	Remanded to district court and dismissed
Wilmington, DE (City of Wilmington v. Klutznick, 1/6/81)	Adjustment	Case dismissed
Ypsilanti, MI (Goodman v. Klutznick, 1/20/81)	Census count challenge, adjustment	Case dismissed
Zebulon, NC (Lewis v. Klutznick, 12/16/80)	Census procedures	Case dismissed